

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2016

CORAM

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

S.A.No.1258/2000

Thiagaraja Gurukkal
Arulmigu Viswanathaswamy Temple,
Valmangalam,
Nannilam Taluk.

Appellant/Plaintiff

..Vs..

1.District Collector,
Nagapattinam District,
Nagapattinam.

2.Asst.Commissioner,
HR & CE, Nagapattinam.

3. Executive Officer,
Arulmigu Viswanathaswamy Temple,
Valmangalam
incharge of Rathnagiriswara Swami Temple,
Thirumarugal.

4.Meenakshisundara Gurukk
Respondents/
Defendants

Prayer: Appeal filed Under Section 100 C.P.C. against the Judgment and Decree in A.S.No.182/99 dt.29.11.1999 on the file of the Principal Subordinate Judge's Court, Nagapattinam reversing the judgment and decree dated 23.06.98 in O.S.159/96 on the file of District Munsif Court, Nannilam.

For Petitioner : Mr.K.S.Vaithyanathan
For Respondents : No Appearance

JUDGMENT

The plaintiff is the appellant herein. Suit for recovery of money with interest was allowed by the Lower Court, but on appeal reversed. Hence the Second Appeal proved facts of the case is as follows.

2.The plaintiff was serving as a Gurukkal at the third defendant temple as a substitute in the place of fourth defendant who was appointed by the second defendant. Since the second defendant was not be able to discharge his function as Gurukkal regularly. Accordingly, the plaintiff was functioning as Gurukkal at the third defendant's temple. This has been implicitly accepted by the authorities of the Hindu Religious Charitable Endowment Department. While plaintiff was regularly paid salary through the fourth defendant, for some reason from Fasli 1392 to 1404 he was not paid. Hence he had caused notice and thereafter preferred the present suit.

3.The second defendant had filed written statement claiming that the plaintiff was not appointed by them as Gurukkal and there is no privity of contract between them and the plaintiff was never functioning as Gurukkal in the third defendant temple. The temple has paid salary to the fourth defendant who is the Gurukkal appointed by the authorities. Since salary for the Fasli 1400 to 1402 were already paid to Meenakshisundara Gurukkal, the fourth defendant, there is no necessity to pay the plaintiff for the very same period. On the same lines, the third defendant have also filed his written statement. Where as the fourth defendant for whom the plaintiff served as substitute has supported the case of the plaintiff and contended that the third defendant temple has recognised the plaintiff as Gurukkal and has extracted work from him. After extracting work, the respondents 1 and 2 are estopped from depriving the salary to the plaintiff on the ground non existence contractual relationship.

The trial Court found infavour of the plaintiff and has allowed the suit. Whereas in appeal, the First Appellate Court has reversed the judgment of the Trial court. The reason for the reversal is that the plaintiff was not appointed directly by the 3rd defendant to function as Gurukkal. Further it accepted the evidence relied by the 3rd defendant to show that Meenakshisundara Gurukkal the person appointed as the Gurukkal, was paid salary for the Fasli upto 1402.

4.Aggrieved by the judgment of the Lower Appellate Court, the plaintiff has preferred this Second Appeal and raised several grounds, questioning the legality of the First Appellate Court judgment.

5.This Court at the time of admission of the Second Appeal has formulated the following substantial questions of law for consideration:

- 1.Whether the lower Court is right in dismissing the suit under an erroneous assumption that Meenakshisundara Gurukkal,

the 4th respondent herein has admitted that he has received a part of the salary due for Fasli 1401 and 1402 while in fact it has been received by him towards past arrears of salary due from F.1399?

2. Whether the lower Court ought to have decreed the suit on the ground of quantum merit especially when it is admitted that the appellant has not rendered any gratuitous service and more so when the temple has been benefited by the service rendered by the appellant?

6. The learned counsel for the appellant submitted that there is implicit contract between the plaintiff and the 3rd defendant. It is expressed in the communication between the third defendant and the plaintiff. While so, the First Appellate Court as erred in holding that there is no privity of contract between the plaintiff and the third defendant. Based on the principle of quantum merit, the plaintiff is entitled for the suit amount for the service he rendered for the temple as Gurukkal.

7. Further, the learned counsel for the appellant submitted that the evidence of DW-1 in respect of payment of salary to the fourth defendant Meenakshisundara Gurukkal upto Fasli 1402 is incorrect and the acquittance given by the fourth defendant towards payment of salary pertains to earlier period and not for Fasli falling 1401 and 1402 to substantiate the submission, the counsel read through the cross examination of DW-1 Sankara Narayanan wherein, the witness admits that he is visited the third defendant temple nearly 10 times and he has seen the plaintiff functioning as Gurukkal. The witness also admits the communications addressed to the plaintiff which are marked as A.4 and A.7. In these communication the plaintiff has been requested to pay the electricity charges, and warned in case of failure he will be held responsible. Further in the cross examination of DW-1, it has been elucidated that for the Fasli 1401 and 1402, the fourth defendant was not paid salary.

8. In support of his submission regarding implicit contract, the learned counsel referred the judgments of Supreme Court reported in (1968) 3 SCR 214 : AIR 1968 SC 1218, where in

".....if services are rendered in terms of the void contract, the provisions of Section 70 of the Indian Contract Act may be applicable. In other words, if the conditions imposed by Section 70 of the

Indian Contract Act are satisfied then the provisions of that Section can be invoked by the aggrieved party to the void contract. The first condition is that a person should lawfully do something for another person or deliver something to him; the second condition is that doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third condition is that the other person for whom something is delivered must enjoy the benefit thereof. If these conditions are satisfied. Section 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing done or delivered. The important point to notice is that in a case falling under Section 70 the person doing something for another delivering something to another cannot sue for the specific performance of the contract, nor ask for damages for the breach the contract, for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. So where a claim for compensation is made by one person against another under Section 70 it is not on the basis of any subsisting contract between the parties but a different kind of obligation. The juristic basis of the obligation in such a case is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or restitution".

9. This Court finds force in the submission made by the learned counsel for the appellant, Ex.A-4 is the letter of Executive Officer of the third defendant temple. Ex.A-4 letter dated 24.07.1994, is addressed to the plaintiff. The recital of this letter indicates that the Commissioner, Joint Commissioner, and Assistant Commissioner of HR & CE Department has found that there is a huge arrears in recovery of dues. Therefore, the respective Gurukkal's are requested to recover the dues and show progress in recover. Further they were request to pay electricity charges and they should not default in paying electricity charges. If there is any default in paying electricity consumption charges they will be held responsible. Again on similar lines Ex.A-7 letter dated 13.09.1994, has been addressed to the plaintiff.

10. On a cumulative reading by these two exhibits along with the evidence given by the Executive Officer of third defendant temple DW-1 Sankara Narayanan, this Court has no doubt that there is an implicit contract between the temple and the plaintiff for his service as Gurukkal. It is admitted fact that plaintiff was not paid salary for the Fasli 1401 and 1402. Neither the temple has paid the salary to the fourth defendant. It is also an admitted fact that the plaintiff has not rendered any gratuitous service to the temple. He has rendered service expecting salary and was paid salary except for the Fasli 1401 and 1402. It is also now seen through witness and exhibits, that the third defendant temple has recognised the plaintiff as Gurukkal and have fixed responsibility on him to recover the dues as well as to pay electricity charges. While so, they are estopped from refusing to recognising the implicit contract between the plaintiff and the third defendant temple. The observations of the Hon'ble Supreme Court in the judgment cited above squarely applies the case in hand. In the very same judgment, the Hon'ble Supreme Court has referred 1943 AC 3261 in Fibrosa .v. Fairbairn, where in it is stated that...

"....any civilised system of law is bound to provide remedies for cases of that has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English Law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution".

11. The third defendant temple having been enriched by the timely service of the plaintiff as Gurukkal now cannot turn around and say there is no privity of contract. Section 70 of the Indian Contract Act precisely protect such sort of quasi contract .

12. Therefore, the judgment of the First Appellate Court is liable to be reversed for the aforesaid reason. The judgment and decree of the First Appellate Court is set aside, Trial court judgment is restored. In the result Second Appeal allowed with costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

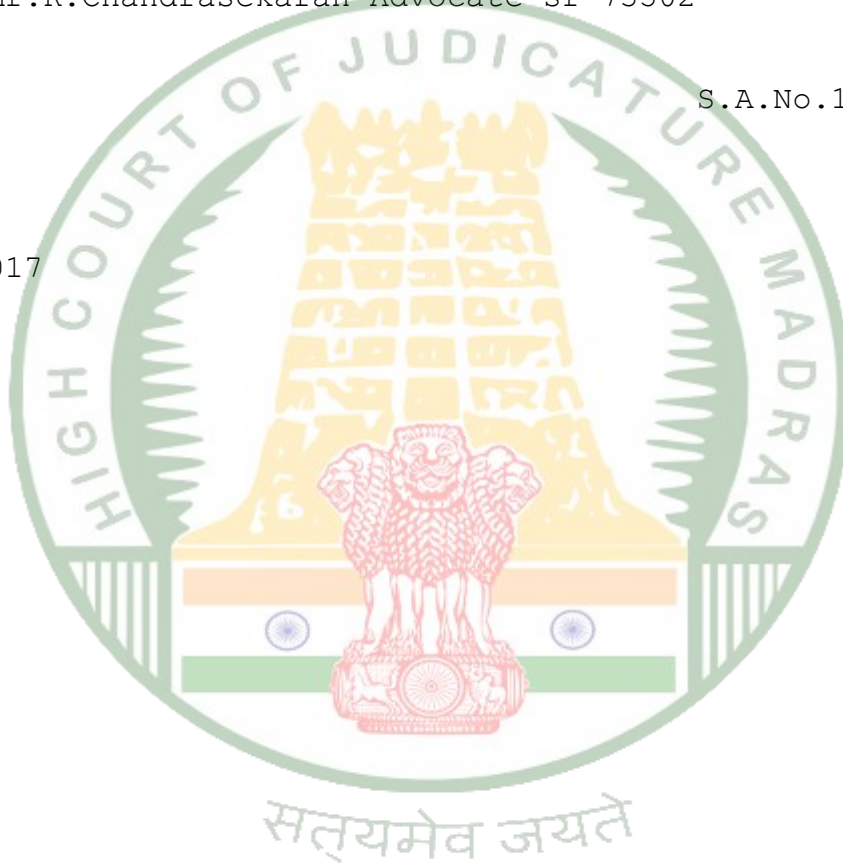
To

1.The Principal Subordinate Judge Nagapattinam
2.The District Munsif Nannilam.
3.The Section Officer
VR Section HighCourt Madras

+1 cc to Mr.K.Chandrasekaran Advocate sr 73502

S.A.No.1258 of 2000

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